



4000-01

DEPARTMENT OF EDUCATION

34 CFR Part 222

RIN 1810-AB21

Impact Aid Program

AGENCY: Office of Elementary and Secondary Education,  
Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Impact Aid Program regulations to reflect changes made to title VIII of the Elementary and Secondary Education Act of 1965 (ESEA or Act), as amended by various statutes, to delete obsolete provisions, to correct technical errors, and to incorporate relevant statutory and regulatory changes from the Individuals with Disabilities Education Act (IDEA) and its implementing regulations. The Secretary makes minor technical, clarifying, and streamlining changes for the reader's convenience, including reordering the regulations that implement the section of the Act regarding local contribution rates that are based on generally comparable local educational agencies (LEAs).

DATES: These regulations are effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Kristen Walls-Rivas, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C155, Washington, DC 20202-6244. Telephone: (202) 260-3858 or by email: [Impact.Aid@ed.gov](mailto:Impact.Aid@ed.gov).

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SUPPLEMENTARY INFORMATION: These final regulations make technical changes to the existing regulations for the Impact Aid Program in 34 CFR part 222. The existing regulations contain technical errors and language that is inconsistent with other regulations and with the current provisions of the Impact Aid statute (title VIII of the ESEA) and statutory and regulatory provisions of parts B and C of the IDEA. The Impact Aid statute has been amended by a number of laws in recent years, including, for purposes of these regulations:

- The National Defense Authorization Act for Fiscal

Year 2013 (P.L. 112-239);

- The 2002 Supplemental Appropriations Act (P.L. 107-206);
- The No Child Left Behind Act of 2001 (P.L. 107-110);
- The Department of Education Appropriations Act, 2001 (P.L. 106-554); and
- The Impact Aid Reauthorization Act of 2000 (P.L. 106-398).

These final regulations make technical corrections, align the regulations with statutory changes made to the program and to relevant statutory and regulatory changes related to the IDEA, delete obsolete provisions, and streamline the regulations. There are also recent statutory changes that will require public comment in order to make changes to the regulations. These substantive changes are not included in this notice. We will seek public comment on them in a notice of proposed rulemaking that we intend to publish at a later date.

In implementing the Impact Aid Program, the Secretary generally issues regulations only where absolutely necessary or to provide increased flexibility or reduce burden. We discuss the major technical changes made by these regulations under the sections of the regulations to which they pertain. We do not discuss minor technical

changes.

Subpart A--General

- Revising §222.2 to reflect that the definition of “modernization” in section 8013 of the Act is applicable to this part.

- Revising §§222.3 and 222.5 to reflect a change to the ESEA requiring that we use preceding-year data in calculating payments under section 8002 of the Act, which means that applications for sections 8002 and 8003 payments are based on the same year’s data.

- Revising §222.4 to remove outdated references to the submission of applications via U.S. mail.

- Revising §222.6 to conform to the requirement in section 8005 of the ESEA that we give written notice to an applicant following the applicant’s failure to comply with the applicable filing deadline.

- Revising §§222.12 and 222.13, concerning overpayment forgiveness, to remove references to obsolete statutory provisions and deadlines since overpayments under those provisions no longer exist.

- Revising §222.19 to update the list of statutes and regulations that apply to the program.

Subpart B--Payments for Federal Property Under Section 8002

of the Act

- Revising §222.22 to conform to statutory changes to section 8002 of the Act concerning compensation that LEAs receive from Federal activities on eligible Federal property.

- Despite the fact that §222.23 is currently superseded by statutory changes to section 8002 of the Act, we are not removing or revising §222.23 because those statutory provisions are scheduled to expire.

Subpart C--Payments for Federally Connected Children Under Section 8003(b) of the Act

- Revising §222.33 to indicate that an LEA makes its membership count before the deadline date upon which Impact Aid applications are due, rather than no later than that date.

- Revising §222.35(a)(2) to refer to an "unsigned" parent-pupil survey form.

- In §222.36, amending paragraphs (a) and (b) to reflect a statutory change related to application data submitted by newly established LEAs, and removing paragraph (d) as obsolete.

- In §222.38, updating the statutory references in the heading and paragraph (a) to conform to current statutory

designations and renumbering the provisions of the section. In addition, we add as new paragraph (b) provisions that incorporate the statutory requirement that we use data from the most recent fiscal year for which satisfactory data are available for local contribution rates based on one-half of the State average or one-half of the national average if satisfactory expenditure data from the third preceding fiscal year are not available.

- Reorganizing the local contribution rate regulations currently in §§222.39 through 222.41 of subpart C to streamline those provisions, remove redundancies, and reflect current law and procedures. In recent fiscal years, approximately 15 State educational agencies (SEAs) have opted to use these provisions. Fourteen of these SEAs used the provision in §222.39 and only one SEA used the additional factor provisions in current §222.39(c). For that reason we have reorganized the sections to keep the basic generally comparable regulations under §222.39 and move the more specific provisions relating to the use of additional factors to §222.40. The substance of these provisions has not changed; in accordance with section 8003(b)(1)(C)(iii) of the Act, the methods that SEAs use to determine generally comparable local contribution rates remain unchanged from the regulations in effect on January

1, 1994.

Paragraphs (a) and (b) of §222.39 describe the method SEAs use to identify generally comparable LEAs for determining local contribution rates, through grouping by grade span/legal classification, size, and location. The current provisions in §222.40 and the examples also refer to grouping by grade span/legal classification, size, and location for determining local contribution rates; we move these provisions to §222.39 in order to eliminate redundancy and streamline the provisions. We remove the remaining provisions in current §222.40, and in the example that follows the section, as they are redundant.

The provisions in new §222.40, moved from current §222.39(c), describe the circumstances and procedures for using additional factors to identify a subgroup of generally comparable LEAs, for the limited number of LEAs that qualify for this option. The examples from current §222.39(c) are retained, with the exception of one example removed for redundancy. Paragraph (e) of new §222.40 contains the provisions of current §222.39(c)(4), with the clarification that the SEA certifies the local contribution rate data by submitting that data to the Secretary, in accordance with the current text of section 8003(b)(1)(c)(iii) of the Act.

- Revising §222.41 to add a reference to new §222.40 and to add clarifying language regarding the certification of data by the SEA.

- Reserving §222.42 for further provisions regarding local contribution rates.

- Moving to new §222.43 the content of current §§222.63 and 222.64 (from subpart E). These provisions implement the authority in section 8003(b)(1)(F) of the ESEA regarding increases in the local contribution rate of an LEA that is unable to provide an equivalent level of education due to higher current expenditures caused by unusual geographic factors. Previously, this type of assistance was grouped as one type of heavily impacted district assistance. Although the Act does not currently treat this assistance as heavily impacted district funding, the substantive requirements for the statutory provision remain unchanged. Paragraph (a)(1)-(3) of new §222.43 contains the information currently in §222.63(a)-(c), updated to reflect statutory changes. Paragraph (a)(4) of new §222.43 contains the provisions of current §222.63(d), specifically that if an LEA is in a State authorized by the Department to take into account Impact Aid under section 8009 of the Act, then it is not eligible to use the

“unusual geographic” provision. Paragraph (b) of new §222.43 contains the contents of current §222.64(b), with clarifying changes. We remove current §222.64(a) as it is already covered by the provisions in §222.43.

- Moving to new §222.44 the provisions currently found in §222.73 related to the calculation of maximum payments for eligible LEAs under section 8003(b)(1)(F) of the ESEA. We remove §222.73(c) in accordance with statutory changes. We also update statutory and regulatory references, and make minor clarifying changes; however, we do not change the content of these provisions.

Subpart D--Payments Under Section 8003(d) of the Act for Local Educational Agencies That Serve Children with Disabilities

- Revising this subpart to incorporate amendments that have been made to parts B and C of the IDEA, through the 2004 statutory changes to IDEA, the 2006 IDEA part B final regulations codified in 34 CFR part 300, and the 2011 IDEA part C final regulations codified in 34 CFR part 303.

- Revising §222.50 (definitions) by removing the previous definitions of the following terms and replacing them with cross-references to the definitions of those terms in the IDEA regulations: free appropriate public

education or FAPE, individualized education program or IEP, related services, and special education. In addition, we add the following relevant new terms with cross-references to their definitions in the applicable IDEA regulations: child with a disability, early intervention services, individualized family service plan or IFSP, and infants, toddlers, and children with disabilities. We use the term "infants, toddlers, and children with disabilities" to refer to both "infants and toddlers with disabilities" who are eligible to receive early intervention services under part C of the IDEA and "children with disabilities" who are eligible to receive special education and related services under part B of the IDEA. Combined, these are all children who are eligible to receive services under the IDEA for purposes of the Impact Aid statute (20 U.S.C. 7703(d) (1) (A)) and we refer to them in these regulations as "infants, toddlers, and children with disabilities." We remove the definition of "preschool" as it is unnecessary due to Impact Aid provisions that permit districts to claim preschool-age students regardless of whether their education is part of elementary education under State law, and to avoid any confusion with respect to the provisions in section 619 and part C of the IDEA regarding preschool children. We remove the definition of "children with

specific learning disabilities” because that term is already encompassed in the definition of “children with disabilities” under part B of the IDEA. We remove the definition of “intermediate educational unit” because it has been subsumed in the IDEA definition of LEA in 34 CFR 303.28.

- Revising §222.51(a) and (b) and adding §222.51(c), to clarify the existing requirement, from the Impact Aid statute in 20 U.S.C. 7703(d)(1), that LEAs providing a free appropriate public education or early intervention services to infants, toddlers, and children with disabilities under Parts B and C of the IDEA may count for Impact Aid payment purposes only certain of those children who are federally connected and eligible to receive services under the IDEA. Under the Impact Aid statute and the IDEA, in order to count those infants, toddlers, and children with disabilities, the LEA must provide free appropriate public education or early intervention services (whichever is applicable) either directly or through an arrangement with another entity at no cost to the children’s parents, and each child being counted must have in place an IEP or IFSP (as appropriate).

- Revising §§222.52, 222.53, 222.54, and 222.55 to reflect revisions to part C of the IDEA by including a

reference to early intervention services. We also revise §222.53 to improve its readability and consistency with IDEA statutory provisions regarding prior approval if funds are used for construction.

Subpart E--Payments for Heavily Impacted Local Educational Agencies Under Section 8003(b) (2) of the Act

- Removing subpart E in its entirety and replacing it with a new subpart E, consisting of a new heading and new §§222.60 through 222.79. The new subpart E, which governs payments to certain heavily impacted LEAs, reflects statutory changes to section 8003(b) (2) of the ESEA. We explain the statutory changes and implementing regulatory provisions by regulatory section number below.

- New §222.60 reflects the statutory change that payments to heavily impacted districts are no longer supplemental to other Impact Aid payments under section 8003(b).

- New §222.61 reflects changes to statutory requirements for data used to determine eligibility of heavily impacted LEAs. This section includes language clarifying that the tax rate requirement for these LEAs may be met by having a tax rate that is at least 95 percent of the average tax rate of either comparable LEAs as

identified in §222.74 or all LEAs in the State, pursuant to section 8003(b)(2)(G) of the Act.

- New §222.62 reflects changes to the criteria in section 8003(b)(2) of the Act that an LEA must meet to be considered an eligible "continuing" heavily impacted LEA, and the criteria that an LEA must meet to be considered an eligible "new" heavily impacted LEA. An LEA that applies and satisfies the eligibility requirements for two consecutive fiscal years is considered a "new" heavily impacted LEA. Section 222.62(b) reflects the statutory requirement that such an LEA would not receive its first payment as a "new" heavily impacted LEA until the second year of application eligibility.

- New §222.63 describes the primary statutory categories of a "continuing" heavily impacted LEA. An LEA that applies and satisfies the eligibility requirement of one of the primary statutory categories and that also received a heavily impacted payment for fiscal year 2000 under section 8003(f) of the ESEA is considered a "continuing" heavily impacted LEA.

- New §222.64 describes the statutory categories of a "new" heavily impacted LEA. These categories are similar to those described in new §222.63. There is one

significant difference in the per pupil expenditure (PPE) requirement for a "new" heavily impacted LEA that has a total enrollment of 350 or more. Those LEAs do not have the option of satisfying the PPE requirement by using the average PPE of all the States. Instead, they can only satisfy this requirement by using the average PPE of all the LEAs within their State. The tax rate requirement for these LEAs may be met by having a tax rate that is at least 95 percent of the average tax rate of either comparable LEAs as identified in §222.74 or all LEAs in the State, pursuant to section 8003(b)(2)(G) of the ESEA. For an LEA that has a total enrollment of less than 350, the PPE and tax rate are based on one or three comparable LEAs.]

- New §222.65 connects the new statutory requirements for heavily impacted LEAs with current regulatory provisions for calculating tax rates for those LEAs.

- New §222.66 reflects the statutory provisions regarding loss of and resumption of eligibility for section 8003(b)(2) payments. In the year that either a "continuing" or "new" heavily impacted LEA loses its eligibility for a payment under section 8003(b)(2), it will still receive a section 8002(b)(2) payment for that year (commonly known as a "hold harmless" payment). However, the payment for the year of ineligibility will be based on

the number of children in average daily attendance (ADA) that would be counted for that application if the LEA were eligible.

For resumption of eligibility, a "continuing" heavily impacted LEA must apply and be eligible for two consecutive years in order to receive another section 8003(b)(2) payment. In contrast, a "new" heavily impacted LEA must only apply and be eligible for the year of application to receive another section 8003(b)(2) payment. The examples and charts are provided for additional clarity as to the statutory requirements.

- New §222.67 contains the provisions of current §222.65 with updated statutory references, and reflects the statutory change that payments to heavily impacted districts are no longer supplemental to other Impact Aid payments under section 8003(b) of the Act. The revision also clarifies that in cases where certain States are certified by the Department to take into account Impact Aid payments, the State is still forbidden from taking into account the amount of Impact Aid that is due to a district's heavily impacted status. There is no substantive change to these provisions.

- New §§222.68-222.73 contain the provisions of current §§222.66 through 222.71, revised to reflect

statutory changes to the eligibility requirements for heavily impacted districts in section 8003(b)(2)(B) and (C) of the Act, to make clarity changes, and to conform references to the other new regulatory sections of subpart E.

- Section 222.74 is revised to reflect new statutory requirements for the selection of one or three generally comparable LEAs for certain LEAs in section 8003(b)(2) of the ESEA and to update the statutory and regulatory citations.

- Section 222.75 is revised to reflect the new statutory provisions in section 8003(b)(2) of the ESEA that require the Department to use data from the third preceding fiscal year, and that limit the type of applicants for which we calculate the PPE of generally comparable school districts to only those districts described in new §222.64(a)(2)(ii), that is, "new" districts with less than 350 ADA.

- Section 222.76, which pertains to ratable reduction of payments for years when insufficient funds are appropriated to make full payments under the Act, is removed because section 8003(b)(3) of the Act now contains detailed provisions for years in which insufficient funds

are appropriated and applies to all payments, including those for heavily impacted districts, making this provision unnecessary.

Subpart F--Payments to Local Educational Agencies for Children With Severe Disabilities Under Section 8003(g) of the Act

- Removing and reserving subpart F due to the repeal of the statutory authority.

Subpart J--Impact Aid Administrative Hearings and Judicial Review Under Section 8011 of the Act

- Revising §222.151 to remove an obsolete statutory reference and incorporate a statutory change lengthening the time period for filing a written request for an administrative hearing from 30 to 60 days.

- Revising §222.152 to remove obsolete statutory references.

- Revising §222.153 to update the addresses to which applicants must mail or deliver those administrative hearing requests. We also add an option for emailing the requests and note our recommendation that applicants elect mail or email delivery.

- Revising §222.159 to reflect the statutory change that an applicant has 30 working days to seek judicial

review following an administrative hearing determination.

Subpart K--Determinations Under Section 8009 of the Act

- Revising §§222.161 and 222.163 to conform to a statutory change in section 8009(b)(1) of the Act that eliminated obsolete references to payments under the former Impact Aid law, Pub. L. 81-874. We also revise §222.161(a) to reflect changes in section 8009(b)(1) of the Act relating to heavily impacted districts, and to delete a reference to a repealed provision regarding LEAs with high concentrations of children with severe disabilities.

- Revising §222.165 to incorporate a statutory change lengthening the time period for filing a written request for an administrative hearing from 30 to 60 days.

Executive Order 12866

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

- (1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the

economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs

(recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may

include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these final regulations only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these final regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements.

Upon review of the costs to LEAs, we have determined there is no financial or resource burden associated with these changes. The LEAs will benefit from an updated and streamlined regulation that will facilitate a better

understanding of the program requirements.

#### Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these final regulations merely reflect changes made to title VIII of the ESEA and to the IDEA and its implementing regulations, as well as technical corrections and clarifications to delete obsolete provisions, correct technical errors, and streamline the Impact Aid Program regulations for the reader's convenience. These corrections and clarifications do not affect the substantive rights or obligations of individuals or institutions and do not establish or affect substantive policy. Thus, under 5 U.S.C. 553(b)(B), the Secretary has determined that proposed regulations are unnecessary.

#### Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. The small entities that are affected by these regulations are small LEAs receiving Federal funds under this program. These regulations contain technical corrections to current regulations. The changes will not have a significant economic impact on any

of the entities affected because the regulations do not impose excessive burdens or require unnecessary Federal supervision.

#### Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control number assigned to the collection of information in these final regulations at the end of the affected sections of the regulations.

#### Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

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List of Subjects in 34 CFR Part 222

Education, Education of children with disabilities, Elementary and secondary education, Federally affected areas, Grant programs--education, Indians--education, Public housing, Reports and recordkeeping requirements, School construction.

Dated: June 5, 2015.

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Deborah Delisle,  
Assistant Secretary for  
Elementary and Secondary  
Education.

For the reasons discussed in the preamble, the Secretary amends part 222 of title 34 of the Code of Federal Regulations as follows:

PART 222--IMPACT AID PROGRAM

1-2. The authority citation for part 222 continues to read as follows:

Authority: 20 U.S.C. 7701-7714, unless otherwise noted.

3. Section 222.2 is amended by:

A. In paragraph (a)(1), adding the term "modernization" in alphabetical order.

B. In paragraph (b) introductory text, removing the phrase "section 14101" and adding, in its place, the phrase "section 9101".

C. Revising the first sentence of the definition of "applicant" and the definition of "federally connected children" in paragraph (c).

The revisions read as follows:

§222.2 What definitions apply to this part?

\* \* \* \* \*

(c) \* \* \*

Applicant means any LEA that files an application for financial assistance under section 8002 or section 8003 of the Act and the regulations in this part implementing those

provisions. \* \* \*

\* \* \* \* \*

Federally connected children means children described in section 8003 or section 8010(c)(2) of the Act.

(Authority: 20 U.S.C. 7703(a)(1) and 7710(c); 37 U.S.C. 101)

\* \* \* \* \*

4. Section 222.3 is amended by revising paragraphs (a) introductory text, (a)(1), (b)(2), and (c)(1)(i) to read as follows:

§222.3 How does a local educational agency apply for assistance under section 8002 or section 8003 of the Act?

\* \* \* \* \*

(a) Except as provided in paragraphs (b) and (d) of this section, on or before January 31 of the fiscal year preceding the fiscal year for which the LEA seeks assistance under section 8002 or section 8003, the LEA must--

(1) File with the Secretary a complete and signed application for payment under section 8002 or section 8003; and

\* \* \* \* \*

(b) \* \* \*

(2) Except as provided in paragraph (d) of this section, within 60 days after the applicable event occurs but not later than September 30 of the fiscal year preceding the fiscal year for which the LEA seeks assistance under section 8002 or section 8003, the LEA must--

(i) File an application with the Secretary as permitted by paragraph (b)(1) of this section; and

(ii) File a copy of that application with its SEA.

(c)(1) \* \* \*

(i) For an application subject to the filing deadlines in paragraph (a)(1) of this section, on or before February 15 of the fiscal year preceding the fiscal year for which the LEA seeks assistance under section 8002 or section 8003; and

\* \* \* \* \*

§222.4 [Amended]

5. Section 222.4 is amended by:

A. In paragraph (a), removing “, or mailed,” and removing the paragraph (a) designation.

B. Removing paragraphs (b) and (c).

6. Section 222.5 is revised to read as follows:

§222.5 When may a local educational agency amend its application?

(a) An LEA may amend its application following any of the events described in §222.3(b)(1) by submitting a written request to the Secretary and a copy to its SEA no later than the earlier of the following events:

(1) The 60th day following the applicable event.

(2) By the end of the Federal fiscal year preceding the fiscal year for which the LEA seeks assistance.

(b) The LEA also may amend its application based on actual data regarding eligible Federal properties or federally connected children if--

(1) Those data were not available at the time the LEA filed its application (e.g., due to a second membership count of students) and are acceptable to the Secretary; and

(2) The LEA submits a written request to the Secretary with a copy to its SEA no later than the end of the Federal fiscal year preceding the fiscal year for which the LEA seeks assistance.

(Authority: 20 U.S.C. 7705)

7. Section 222.6 is amended by:

- A. In paragraph (a), adding "section" before "8003".
- B. Revising paragraph (b).

The revision reads as follows:

§222.6 Which applications does the Secretary accept?

\* \* \* \* \*

(b) The Secretary does not accept or approve for payment any section 8002 or section 8003 application that is not timely filed with the Secretary as described in paragraph (a) of this section, except as follows:

(1) The Secretary accepts and approves for payment any otherwise approvable application filed within--

(i) 60 days from the application deadline established in §222.3; or

(ii) 60 days from the date of the Secretary's written notice of an LEA's failure to comply with the applicable filing date.

(2) The Secretary reduces the payment for applications described in paragraph (b)(1) of this section by 10 percent of the amount that would have been paid if the LEA had timely filed the application.

\* \* \* \* \*

8. Section 222.12 is amended by revising paragraph (a) to read as follows:

§222.12 What overpayments are eligible for forgiveness under section 8012 of the Act?

(a) The Secretary considers as eligible for forgiveness under section 8012 of the Act ("eligible overpayment") any amount that is more than an LEA was eligible to receive for a particular fiscal year under the

Act, except for the types of overpayments listed in §222.13.

\* \* \* \* \*

9. Section 222.13 is revised to read as follows:

§222.13 What overpayments are not eligible for forgiveness under section 8012 of the Act?

The Secretary does not consider as eligible for forgiveness under section 8012 of the Act any overpayment caused by an LEA's failure to expend or account for funds properly under the following laws and regulations:

(a) Section 8003(d) of the Act (implemented in subpart D of this part) for certain federally connected children with disabilities.

(b) Section 8007 of the Act for construction.  
(Authority: 20 U.S.C. 7712)

10. Section 222.16 is amended by revising the section heading to read as follows:

§222.16 What information and documentation must a local educational agency submit for an eligible overpayment to be considered for forgiveness?

\* \* \* \* \*

11. Section 222.19 is amended by:

A. Removing paragraphs (b) (3) and (5) and redesignating paragraph (b) (4) as paragraph (b) (3).

- B. Adding new paragraph (b) (4).
- C. Revising paragraph (c).
- D. Adding paragraph (d).

The additions and revision read as follows:

§222.19 What other statutes and regulations apply to this part?

\* \* \* \* \*

(b) \* \* \*

(4) 34 CFR part 84 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)).

(c) 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)).

(d) 2 CFR part 200, as adopted in 2 CFR part 3474 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), for payments under sections 8003(d) (payments for federally connected children with disabilities), 8007 (construction), and 8008 (school facilities).

\* \* \* \* \*

12. Section 222.22 is amended by revising paragraphs (b) (1), (c), and (d) to read as follows:

§222.22 How does the Secretary treat compensation from

Federal activities for eligibility and payment purposes?

\* \* \* \* \*

(b) \* \* \*

(1) The LEA received revenue during the preceding fiscal year that is generated directly from the eligible Federal property or activities in or on that property; and

\* \* \*

(c) If an LEA described in paragraph (a) of this section received revenue described in paragraph (b)(1) of this section during the preceding fiscal year that, when added to the LEA's projected total section 8002 payment for the fiscal year for which the LEA seeks assistance, exceeds the maximum payment amount under section 8002(b) for the fiscal year for which the LEA seeks assistance, the Secretary reduces the LEA's projected section 8002 payment by an amount equal to that excess amount.

(d) For purposes of this section, the amount of revenue that an LEA receives during the previous fiscal year from activities conducted on Federal property does not include payments received by the agency from the Secretary of Defense to support--

(1) The operation of a domestic dependent elementary or secondary school; or

(2) The provision of a free public education to

dependents of members of the Armed Forces residing on or near a military installation.

\* \* \* \* \*

Subpart C--Payments for Federally Connected Children Under Section 8003(b) of the Act.

12. Subpart C is amended by revising the subpart heading to read as set forth above.

13. Section 222.32 is amended by revising the section heading to read as follows:

§222.32 What information does the Secretary use to determine a local educational agency's basic support payment?

\* \* \* \* \*

§222.33 [Amended]

14. Section 222.33 is amended by:

A. Removing the words "on or" in paragraph (a)(1).

B. Removing ", 7706" from the authority citation.

§222.34 [Amended]

15. Section 222.34 is amended by removing "§222.5(b)(1)" in paragraph (b) and adding in its place "§222.5(b)".

§222.35 [Amended]

16. Section 222.35 is amended by:

A. Removing the words "accept a parent-pupil survey form" in paragraph (a)(2) and adding in their place the words "accept an unsigned parent-pupil survey form".

B. Removing "and 7706" from the authority citation.

17. Section 222.36 is amended by:

A. Revising the section heading.

B. Revising paragraph (a) introductory text.

C. Revising paragraph (b).

D. Removing paragraph (d).

The revisions read as follows:

§222.36 How many federally connected children must a local educational agency have to receive a payment under section 8003?

(a) An LEA is eligible to receive a payment under section 8003 for a fiscal year only if the total number of eligible federally connected children for whom it provided a free public education for the preceding fiscal year was--

\* \* \* \* \*

(b) An LEA is eligible to receive a payment under section 8003 for a fiscal year on behalf of federally connected children described in section 8003(a)(1)(F) or (G) only if the total number of those children for whom it provided a free public education for the preceding fiscal year was--

(1) At least 1,000 in ADA; or

(2) At least 10 percent of the total number of children in ADA.

\* \* \* \* \*

18. Section 222.38 is revised to read as follows:

§222.38 What is the maximum basic support payment that a local educational agency may receive under section 8003(b) (1) ?

(a) The maximum basic support payment that an LEA may receive under section 8003(b) (1) for any fiscal year is the sum of its total weighted student units under section 8003(a) (2) for the federally connected children eligible to be counted as the basis for payment, multiplied by the greater of the following:

(1) One-half of the State average per pupil expenditure for the third fiscal year preceding the fiscal year for which the LEA seeks assistance.

(2) One-half of the national average per pupil expenditure for the third fiscal year preceding the fiscal year for which the LEA seeks assistance.

(3) The local contribution rate (LCR) based on generally comparable LEAs determined in accordance with §§222.39-222.41.

(4) The State average per pupil expenditure for the third preceding fiscal year multiplied by the local contribution percentage as defined in section 8013(8) of the Act for that same year.

(b) If satisfactory data from the third preceding fiscal year are not available for the expenditures described in paragraphs (a)(1) or (2), the Secretary uses data from the most recent fiscal year for which data that are satisfactory to the Secretary are available.

(Authority: 20 U.S.C. 7703(a) and (b))

19. Section 222.39 is amended by:

A. Revising paragraphs (a) introductory text, (a)(1), (a)(2)(i), and (a)(2)(iii).

B. Revising paragraph (c).

C. Adding an example after paragraph (d)(6).

The revisions and addition read as follows:

§222.39 How does a State educational agency identify generally comparable local educational agencies for local contribution rate purposes?

(a) To identify generally comparable LEAs within its State for LCR purposes, the State educational agency (SEA) for that State, after appropriate consultation with the applicant LEAs in the State, shall use data from the third fiscal year preceding the fiscal year for which the LCR is

being computed to group all of its LEAs, including all applicant LEAs, as follows:

(1) Grouping by grade span/legal classification alone. Divide all LEAs into groups that serve the same grade span and then subdivide the grade span groups by legal classification, if the Secretary considers this classification relevant and sufficiently different from grade span within the State. As an alternative grade-span division, divide all LEAs into elementary, secondary, or unified grade-span groups, as appropriate, within the State.

(2) Grouping by grade span/legal classification and size. (i) Divide all LEAs into groups by grade span (or the alternative grade-span groups described in paragraph (a)(1) of this section) and legal classification, if relevant and sufficiently different from grade span and size.

\* \* \* \* \*

(iii) Divide each group into either two subgroups or three subgroups.

\* \* \* \* \*

(c) The LCR for a "significantly impacted" LEA described in paragraph (b)(1) of this section is the LCR of any group in which that LEA would be included based on

grade span/legal classification, size, location, or a combination of these factors, if the LEA were not excluded as significantly impacted.

(d) \* \* \*

(6) \* \* \*

Example. An LEA applies for assistance under section 8003 and wishes to recommend to the Secretary an LCR based on generally comparable LEAs within its State.

1. Characteristics of Applicant LEA. The grade span of an applicant LEA is kindergarten through grade 8 (K-8). In the applicant's State, legal classification of LEAs is based on grade span, and thus does not act to further subdivide groups of LEAs.

The ADA of the applicant LEA is above the median ADA of LEAs serving only K-8 in the State.

The applicant LEA is located outside an MSA.

2. Characteristics of Other LEAs Serving Same Grade Span. The SEA of the applicant's State groups all LEAs in its State according to the factors in §222.39.

a. The SEA identifies the following groups:

(i) One hundred and one LEAs serve only K-8. The SEA has identified a group of 50 LEAs having an ADA above the median ADA for the group of 101, one LEA having an ADA at the median, and a group of 50 LEAs having an ADA below the

median ADA; and according to §222.39(a)(2), the SEA considers 51 LEAs to have an ADA below the median ADA.

(ii) Of the 101 LEAs in the group, the SEA has identified a group of 64 LEAs as being inside an MSA and a group of 37 LEAs as being outside an MSA.

(iii) Among the group of 50 LEAs having an ADA above the median, the SEA has identified a group of 35 LEAs as being inside an MSA and a group of 15 LEAs as being outside an MSA.

(iv) Among the group of 51 LEAs having an ADA at or below the median, the SEA has identified a group of 29 LEAs as being inside an MSA and 22 LEAs as being outside an MSA.

(v) One LEA has 20 percent of its ADA composed of children identified under section 8003(a)(1)(A)-(C) and, therefore, must be excluded from any group it falls within before the SEA computes an LCR for the group. The LEA has an ADA below the median ADA and is located outside an MSA.

b. On the basis of §222.41, the SEA computes the LCR for each group of generally comparable LEAs that the SEA has identified.

20. Section 222.40 is revised to read as follows:

§222.40 What procedures does a State educational agency use for certain local educational agencies to determine

generally comparable local educational agencies using additional factors, for local contribution rate purposes?

(a) To use the procedures in this section, the applicant LEA, for the year of application, must either--

(1) (i) Be located entirely on Federal land; and

(ii) Be raising either no local revenues or an amount of local revenues the Secretary determines to be minimal;  
or

(2) (i) Be located in a State where State aid makes up no more than 40 percent of the State average per pupil expenditure in the third fiscal year preceding the fiscal year for which the LCR is being computed;

(ii) In its application, have federally connected children identified under section 8003(a)(1)(A)-(C) equal to at least 20 percent of its total ADA; and

(iii) In its application, have federally connected children identified under section 8003(a)(1)(A)-(G) who were eligible to be counted as the basis for payment under section 8003 equal to at least 50 percent of its total ADA.

(b) If requested by an applicant LEA described in paragraph (a) of this section, the SEA follows the procedures in this section, in consultation with the LEA, to determine generally comparable LEAs using additional

factors for the purpose of calculating and certifying an LCR for that LEA.

(c) The SEA identifies--

(1) The subgroup of generally comparable LEAs from the group identified under §222.39(a)(2) (grouping by grade span/legal classification and size) that includes the applicant LEA; or

(2) For an LEA described in paragraph (a) of this section that serves a different span of grades from all other LEAs in its State (and therefore cannot match any group of generally comparable LEAs under §222.39(a)(2)), for purposes of this section only, a group using only legal classification and size as measured by ADA.

(d) From the subgroup described in paragraph (c) of this section, the SEA then identifies 10 or more generally comparable LEAs that share one or more additional common factors of general comparability with the applicant LEA described in paragraph (a) of this section, as follows:

(1)(i) The SEA must consider one or more generally accepted, objectively defined factors that affect the applicant's cost of educating its children. Examples of such cost-related factors include location inside or outside an MSA, an unusually large geographical area or an economically depressed area, sparsity of population, and

the percentage of its students who are from low-income families or who are children with disabilities, neglected or delinquent children, low-achieving children, or children with limited English proficiency.

(ii) The SEA may not consider cost-related factors that can be varied at the discretion of the applicant LEA or its generally comparable LEAs or factors dependent on the wealth of the applicant LEA or its generally comparable LEAs. Examples of factors that may not be considered include special alternative curricular programs, pupil-teacher ratio, and per pupil expenditures.

(2) The SEA applies the factor or factors of general comparability identified under paragraph (d)(1)(i) of this section in one of the following ways in order to identify 10 or more generally comparable LEAs for the eligible applicant LEA, none of which may be significantly impacted LEAs:

(i) The SEA identifies all of the LEAs in the group to which the eligible applicant LEA belongs under §222.39(a)(2) that share the factor or factors. If the subgroup containing the eligible applicant LEA includes at least 10 other LEAs (excluding significantly impacted LEAs), it will be the eligible applicant LEA's new group of generally comparable LEAs. The SEA computes the LCR for

the eligible applicant LEA using the data for all of the LEAs in the subgroup except the eligible applicant LEA.

Example 1. An eligible applicant LEA contains a designated economically depressed area, and the SEA, in consultation with the LEA, identifies "economically depressed area" as an additional factor of general comparability. From the group of LEAs under §222.39(a)(2) that includes the eligible applicant LEA, the SEA identifies two subgroups, those LEAs that contain a designated economically depressed area and those that do not. The entire subgroup identified by the SEA that includes the eligible applicant LEA is that LEA's new group of generally comparable LEAs if it contains at least 10 LEAs.

(ii) After the SEA identifies all of the LEAs in the group to which the eligible applicant LEA belongs under §222.39(a)(2) that share the factor or factors, the SEA then systematically orders by ADA all of the LEAs in the group that includes the eligible applicant LEA. The SEA may further divide the ordered LEAs into subgroups by using logical division points (e.g., the median, quartiles, or standard deviations) or a continuous interval of the ordered LEAs (e.g., a percentage or a numerical range). If the subgroup containing the eligible applicant LEA includes

at least 10 other LEAs (excluding significantly impacted LEAs), it will be the eligible applicant LEA's new group of generally comparable LEAs. The SEA computes the LCR for the eligible applicant LEA using the data for all of the LEAs in the subgroup except the eligible applicant LEA.

Example 2. An eligible applicant LEA serves an unusually high percentage of children with disabilities, and the SEA, in consultation with the LEA, identifies "proportion of children with disabilities" as an additional comparability factor. From the group of LEAs under §222.39(a)(2) that includes the eligible applicant LEA, the SEA lists the LEAs in descending order according to the percentage of children with disabilities enrolled in each of the LEAs. The SEA divides the list of LEAs into four groups containing equal numbers of LEAs. The group containing the eligible applicant LEA is that LEA's new group of generally comparable LEAs if it contains at least 10 LEAs.

(iii) The SEA may apply more than one factor of general comparability in identifying a new group of 10 or more generally comparable LEAs for the eligible applicant LEA. If the subgroup containing the eligible applicant LEA includes at least 10 other LEAs (excluding significantly impacted LEAs), it will be the eligible applicant LEA's new

group of generally comparable LEAs. The SEA computes the LCR for the eligible applicant LEA using the data from all of the LEAs in the subgroup except the eligible applicant LEA.

Example 3. An eligible applicant LEA is very sparsely populated and serves an unusually high percentage of children with limited English proficiency. The SEA, in consultation with the LEA, identifies "sparsity of population" and "proportion of children with limited English proficiency" as additional comparability factors. From the group of LEAs under §222.39(a)(2) that includes the eligible applicant LEA, the SEA identifies all LEAs that are sparsely populated. The SEA further subdivides the sparsely populated LEAs into two groups, those that serve an unusually high percentage of children with limited English proficiency and those that do not. The subgroup of at least 10 sparsely populated LEAs that serve a high percentage of children with limited English proficiency is the eligible applicant LEA's new group of generally comparable LEAs.

(e)(1) Using the new group of generally comparable LEAs selected under paragraph (d) of this section, the SEA computes the LCR for the eligible applicant LEA according to the provisions of §222.41.

(2) The SEA certifies the resulting LCR by submitting that LCR to the Secretary and providing the Secretary a description of the additional factor or factors of general comparability and the data used to identify the new group of generally comparable LEAs.

(3) The Secretary reviews the data submitted by the SEA, and accepts the LCR for the purpose of use under section 8003(b)(1)(C)(iii) in determining the LEA's maximum payment under section 8003 if the Secretary determines that it meets the purposes and requirements of the Act and this part.

(Authority: 20 U.S.C. 7703(b)(1)(C)(iii))

21-22. Section 222.41 is amended by revising the section heading, the introductory text, and paragraph (d) to read as follows:

§222.41 How does a State educational agency compute and certify local contribution rates based upon generally comparable local educational agencies?

Except as otherwise specified in the Act, the SEA, subject to the Secretary's review and approval, computes and certifies an LCR for each group of generally comparable LEAs within its State that was identified using the factors in §222.39, and §222.40 if appropriate, as follows:

\* \* \* \* \*

(d) The SEA certifies the resulting figure for each group as the LCR for that group of generally comparable LEAs to be used by the Secretary under section 8003(b) (1) (C) (iii) in determining the LEA's maximum payment amount under section 8003.

\* \* \* \* \*

23. Section 222.43 is added to read as follows:

§222.43 What requirements must a local educational agency meet in order to be eligible for financial assistance under section 8003(b) (1) (F) due to unusual geographic features?

An LEA is eligible for financial assistance under section 8003(b) (1) (F) if the Secretary determines that the LEA meets all of the following requirements--

(a) (1) The LEA is eligible for a basic support payment under section 8003(b), including meeting the maintenance of effort requirements in section 8003(g) of the Act;

(2) The LEA timely applies for assistance under section 8003(b) (1) (F) and meets all other requirements of subparts A and C;

(3) The LEA is meeting the tax rate requirement in §222.68(c) and the other applicable requirements of §§222.68 through 222.72; and

(4) The LEA is not in a State that takes the LEA's payment under section 8003(b)(1)(F) into account in an equalization program that qualifies under section 8009 of the Act.

(b)(1) As part of its section 8003 application, the LEA indicates in writing that it wishes to apply for an "unusual geographic" payment and it will provide the Secretary with documentation upon request that demonstrates that the LEA is unable to provide a level of education equivalent to that provided by its generally comparable LEAs because--

(i) The applicant's current expenditures are affected by unusual geographic factors; and

(ii) As a result, those current expenditures are not reasonably comparable to the current expenditures of its generally comparable LEAs.

(2) The LEA's documentation must include--

(i) A specific description of the unusual geographic factors on which the applicant is basing its request for compensation under this section and objective data demonstrating that the applicant is more severely affected by the factors than any other LEA in its State;

(ii) Objective data demonstrating the specific ways in which the unusual geographic factors affect the

applicant's current expenditures so that they are not reasonably comparable to the current expenditures of its generally comparable LEAs;

(iii) Objective data demonstrating the specific ways in which the unusual geographic factors prevent the applicant from providing a level of education equivalent to that provided by its generally comparable LEAs; and

(iv) Any other information that the Secretary may require to make an eligibility determination under this section.

(Authority: 20 U.S.C. 7703(b)(1)(F))

23-24. Section 222.44 is added to read as follows:

§222.44 How does the Secretary determine a maximum payment for local educational agencies that are eligible for financial assistance under section 8003(b)(1)(F) and §222.43?

The Secretary determines a maximum payment under section 8003(b)(1)(F) for an eligible LEA, using data from the third preceding fiscal year, as follows:

(a) Subject to paragraph (b) of this section, the Secretary increases the eligible LEA's local contribution rate (LCR) for section 8003(b) payment purposes to the amount the Secretary determines will compensate the applicant for the increase in its current expenditures

necessitated by the unusual geographic factors identified under §222.43(b) (2) .

(b) The Secretary does not increase the LCR under this section to an amount that is more than--

(1) Is necessary to allow the applicant to provide a level of education equivalent to that provided by its generally comparable LEAs; or

(2) The per pupil share for all children in ADA of the increased current expenditures necessitated by the unusual geographic factors identified under §222.43, as determined by the Secretary.

(Authority: 20 U.S.C. 7703(b) (1) (F))

25. Section 222.50 is revised to read as follows:

§222.50 What definitions apply to this subpart?

In addition to the terms referenced or defined in §222.2, the following definitions apply to this subpart:

Child with a disability as defined in 34 CFR 300.8.

Early intervention services as defined in 34 CFR 303.13.

Free appropriate public education or FAPE as defined in 34 CFR 300.17.

Individualized education program or IEP as defined in 34 CFR 300.22.

Individualized family service plan or IFSP as defined in 34 CFR 303.20.

Infant or toddler with a disability as defined in 34 CFR 303.21.

Infants, toddlers, and children with disabilities, for these regulations, means both a "child with a disability" as defined in 34 CFR 300.8 and an "infant or toddler with a disability" as defined in 34 CFR 303.21.

Related services as defined in 34 CFR 300.34.

Special education as defined in 34 CFR 300.39.

(Authority: 20 U.S.C. 1401, 1414, 1432, 1436, 7703, 7705, 7713; 34 CFR parts 300 and 303)

26. Section 222.51 is revised to read as follows:

§222.51 Which children may a local educational agency count for payment under section 8003(d) of the Act?

(a) An LEA may count children described in sections 8003(a)(1)(A)(ii), (a)(1)(B), (a)(1)(C), and (a)(1)(D) of the Act who are eligible for services under the provisions of Part B or Part C of the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) (IDEA), for the purpose of computing a payment under section 8003(d) in accordance with the provisions of this section.

(b)(1) An LEA may count a child with a disability described in paragraph (a) of this section who attends a

private school or residential program if the LEA has placed or referred the child in accordance with the provisions of section 613 of the IDEA and 34 CFR part 300, subparts C and D.

(2) An LEA may not count a child with a disability described in paragraph (a) of this section who is placed in a private school by his or her parents, but that child may participate in public school programs that use section 8003(d) funds.

(c) An LEA may count infants and toddlers with disabilities described in paragraph (a) of this section if-

-

(1) The LEA provides early intervention services or FAPE to each of those children--

(i) Either directly or through an arrangement with another entity; and

(ii) The State does not charge a fee or other out-of-pocket cost to the child's parents under the State's system of payments on file with the Secretary required under 34 CFR 303.203(b)(1), 303.520, and 303.521, and there is no other cost to the child's parents (the costs of premiums do not count as out-of-pocket costs); and

(2) Each of those children has an IFSP or IEP (as appropriate).

(Authority: 20 U.S.C. 1400 et seq. and 7703(d))

27. Section 222.52 is amended by revising paragraph (b) to read as follows:

§222.52 What requirements must a local educational agency meet to receive a payment under section 8003(d)?

\* \* \* \* \*

(b) Have in effect written IEPs or IFSPs for all federally connected children with disabilities it claims under section 8003(d); and

\* \* \* \* \*

28. Section 222.53 is amended by:

A. In paragraph (a), removing the phrase "part 300" and adding in its place the phrase "parts 300 and 303".

B. Revising paragraph (c) (1).

C. In paragraph (c) (2) introductory text, adding ", and early intervention services for," following the words "public education of".

D. In paragraphs (c) (2) (i) and (ii), adding ", or early intervention services for," following the words "public education of".

E. In paragraph (d) (2) introductory text adding the phrase "and for early intervention services" following "special education and related services".

F. In paragraph (d)(2)(i), adding the phrase "and for early intervention services" following "special education and related services".

G. In paragraph (d)(3), adding the phrase "and for early intervention services" following "special education and related services".

The revision reads as follows:

§222.53 What restrictions and requirements apply to the use of funds provided under section 8003(d)?

\* \* \* \* \*

(c) \* \* \*

(1) Expenditures that are reasonably related to the conduct of programs or projects for the free appropriate public education of, or early intervention services for, federally connected children with disabilities, which may include--

(i) Program planning and evaluation; and

(ii) Construction of or alteration to existing school facilities, but only when in accordance with section 605 of the IDEA and when the Secretary authorizes in writing those uses of funds.

\* \* \* \* \*

§222.54 [Amended]

29. Section 222.54 is amended by adding ", and for

early intervention services," in paragraph (b) following "all funds for programs".

§222.55 [Amended]

30. Section 222.55 is amended by removing the phrase "part 300" and adding, in its place, the phrase "parts 300 and 303".

31. Subpart E is revised to read as follows:

Subpart E--Payments for Heavily Impacted Local Educational Agencies Under Section 8003(b) (2) of the Act

Sec.

222.60 What are the scope and purpose of this subpart?

222.61 What data are used to determine a local educational agency's eligibility under section 8003(b) (2) of the Act?

222.62 How are local educational agencies determined eligible under section 8003(b) (2)?

222.63 When is a local educational agency eligible as a continuing applicant for payment under section 8003(b) (2) (B)?

222.64 When is a local educational agency eligible as a new applicant for payment under section 8003(b) (2) (C)?

222.65 What other requirements must a local educational agency meet to be eligible for financial assistance under section 8003(b) (2)?

222.66 How does a local educational agency lose and resume eligibility under section 8003(b) (2)?

222.67 How may a State aid program affect a local educational agency's eligibility for assistance under section 8003(b) (2)?

222.68 How does the Secretary determine whether a fiscally independent local educational agency meets the applicable tax rate requirement?

222.69 What tax rates does the Secretary use if real property is assessed at different percentages of true value?

222.70 What tax rates does the Secretary use if two or more different classifications of real property are taxed at different rates?

222.71 What tax rates may the Secretary use if substantial

- local revenues are derived from local tax sources other than real property taxes?
- 222.72 How does the Secretary determine whether a fiscally dependent local educational agency meets the applicable tax rate requirement?
- 222.73 What information must the State educational agency provide?
- 222.74 How does the Secretary identify generally comparable local educational agencies for purposes of section 8003(b) (2)?
- 222.75 How does the Secretary compute the average per pupil expenditure of generally comparable local educational agencies under this subpart?
- 222.76-222.79 [Reserved]

Subpart E--Payments for Heavily Impacted Local Educational Agencies Under Section 8003(b) (2) of the Act

§222.60 What are the scope and purpose of this subpart?

The regulations in this subpart implement section 8003(b) (2) of the Act, which provides financial assistance to certain heavily impacted local educational agencies (LEAs). The specific eligibility requirements are detailed in §§222.62 through 222.66.

(Authority: 20 U.S.C. 7703(b) (2))

§222.61 What data are used to determine a local educational agency's eligibility under section 8003(b) (2) of the Act?

(a) Computations and determinations made with regard to an LEA's eligibility under section 8003(b) (2) in §§222.61 through 222.66 of these regulations are based on the LEA's final student, revenue, expenditure, and tax data

from the third fiscal year preceding the fiscal year for which it seeks assistance.

(b) Except for an LEA described in §222.64(a)(3)(ii), the LEAs used for meeting the applicable tax rate requirement are the comparable LEAs that are identified in §222.74 or all LEAs in the applicant's State.

(c) As used in this subpart, the phrase "tax rate for general fund purposes" means "local real property tax rates for current expenditures purposes" as defined in §222.2. "Current expenditures" is defined in section 8013(4) of the ESEA.

(Authority: 20 U.S.C. 7703(b)(2))

§222.62 How are local educational agencies determined eligible under section 8003(b)(2)?

(a) An LEA that is eligible to apply for a "continuing" heavily impacted payment under section 8003(b)(2)(B) is one that received an additional assistance payment under section 8003(f) for fiscal year 2000 and that meets eligibility requirements specified in §222.63.

(b) An LEA that is eligible to apply for a "new" heavily impacted payment under section 8003(b)(2)(C) is one that did not receive an additional assistance payment under section 8003(f) for fiscal year 2000 and that meets eligibility requirements specified in §222.64 for two

consecutive application years.

(Authority: 20 U.S.C. 7703(b)(2))

§222.63 When is a local educational agency eligible as a continuing applicant for payment under section 8003(b)(2)(B)?

A continuing heavily impacted LEA must have--

(a) The same boundaries as those of a Federal military installation;

(b)(1) An enrollment of federally connected children described in section 8003(a)(1) equal to at least 35 percent of the total number of children in average daily attendance (ADA) in the LEA;

(2) A per pupil expenditure (PPE) that is less than the average PPE of the State in which the LEA is located or of all the States, whichever PPE is greater (except that an LEA with a total student enrollment of less than 350 students shall be determined to have met the PPE requirement); and

(3) A tax rate for general fund purposes of at least 95 percent of the average tax rate of comparable LEAs identified under §222.74 or all LEAs in the applicant's State;

(c)(1) An enrollment of federally connected children described in section 8003(a)(1) equal to at least 30

percent of the total number of children in ADA in the LEA;  
and

(2) A tax rate for general fund purposes of at least 125 percent of the average tax rate of comparable LEAs identified under §§222.39-40 or of all LEAs in the applicant's State; or

(d) A total enrollment of at least 25,000 students, of which at least 50 percent are children described in section 8003(a)(1) and at least 6,000 of such children are children described in section 8003(a)(1)(A) and (B).

(Authority: 20 U.S.C. 7703(b)(2)(B))

§222.64 When is a local educational agency eligible as a new applicant for payment under section 8003(b)(2)(C)?

A new heavily impacted LEA must have--

(a)(1)(i) Federally connected children equal to at least 50 percent of the total number of children in average daily attendance (ADA) in the LEA if children described in section 8003(a)(1)(F)-(G) are eligible to be counted for a section 8003(b)(1) payment; or

(ii) Federally connected children equal to at least 40 percent of the total number of children in ADA if children described in section 8003(a)(1)(F)-(G) are not eligible to be counted for a section 8003(b)(1) payment;  
and

(2) (i) If the LEA has a total ADA of more than 350 children,

(A) A per pupil expenditure (PPE) that is less than the average of the State in which the LEA is located; and

(B) A tax rate for general fund purposes equal to at least 95 percent of the average tax rate of comparable LEAs identified in §222.74 or of all LEAs in the applicant's State; or

(ii) If the LEA has a total ADA of less than 350 children,

(A) A PPE that is less than the average PPE of one or three generally comparable LEAs identified in §222.74(b); and

(B) A tax rate equal to at least 95 percent of the average tax rate of one or three generally comparable LEAs identified in §222.74(b);

(b) The same boundaries as those of a Federal military installation; or

(c) (1) The same boundaries as island property held in trust by the Federal government;

(2) No taxing authority; and

(3) Received a payment under section 8003(b) (1) for fiscal year 2001.

(Authority: 20 U.S.C. 7703(b) (2))

§222.65 What other requirements must a local educational agency meet to be eligible for financial assistance under section 8003(b) (2)?

Subject to §222.66, an LEA described in §222.63 or §222.64 is eligible for financial assistance under section 8003(b) (2) if the Secretary determines that the LEA meets the following requirements:

(a) The LEA timely applies for assistance under section 8003(b) (2) and meets all of the other application and eligibility requirements of subparts A and C of these regulations.

(b) Except for an LEA described in §222.63(a) or (d), or §222.64(b) or (c), the LEA meets the applicable tax rate requirement in accordance with the procedures and requirements of §§222.68 through 222.74.

(Authority: 20 U.S.C. 7703(b) (2))

§222.66 How does a local educational agency lose and resume eligibility under section 8003(b) (2)?

(a) A continuing heavily impacted LEA that fails to meet the eligibility requirements in §222.63 in any fiscal year or a new heavily impacted LEA that received a section 8003(b) (2) payment but then fails to meet the eligibility requirements in §222.64 will still receive a heavily impacted payment in the first year of ineligibility, based

on the number of children in ADA that would be counted for that application if the LEA were eligible.

(b) (1) A continuing heavily impacted LEA may resume eligibility for a heavily impacted payment if it applies in the fiscal year preceding the year for which it seeks eligibility and it meets the eligibility requirements in §222.63 for both fiscal years.

(2) In the first fiscal year that a continuing heavily impacted LEA qualifies to resume eligibility, it cannot receive a heavily impacted payment but instead will receive a basic support payment under section 8003(b) (1) for that year.

Example:

CONTINUING LEA

In Federal Fiscal Years (FFYs) 1 and 2, a continuing LEA is eligible for a section 8003(b) (2) payment. In FFY 3, the LEA applies but is ineligible for section 8003(b) (2). However, it will still receive a payment under section 8003(b) (2) for FFY 3 (a "hold harmless" payment under §222.66(a)). For FFY 4, the LEA applies and meets the requirements. The LEA is not eligible to receive a section 8003(b) (2) payment in FFY 4 but is instead eligible for a section 8003(b) (1) payment (see §222.66(b)). In FFY 5, the LEA applies, meets the requirements, and receives a

section 8003(b) (2) payment. The LEA not only must apply one year in advance and meet the section 8003(b) (2) requirements (FFY 4) but it must apply and meet the requirements for the subsequent FFY (year 5). The effects of these requirements on a continuing applicant's status and payments are summarized in the table below.

*Continuing LEAs*

	<i>FFY 1</i>	<i>FFY 2</i>	<i>FFY 3</i>	<i>FFY 4</i>	<i>FFY 5</i>
8003(b) (2) Eligibility:	Yes	Yes	No	Yes	Yes
Payment Type:	(b) (2)	(b) (2)	(b) (2) Hold Harmless	(b) (1)	(b) (2)

(c) A new heavily impacted LEA may resume eligibility for a heavily impacted payment if it meets the eligibility requirements in §222.64 for the fiscal year for which it seeks a payment.

Example:

NEW LEA

A new LEA applies for a section 8003(b) (2) payment and meets the applicable eligibility criteria. The LEA does not receive a section 8003(b) (2) payment in FFY 1 and it must apply and meet the requirements again in FFY 2 before it can receive a (b) (2) payment (see §222.62(b)). If that new district is then ineligible for a year, it can regain

eligibility only if it meets the applicable criteria in a subsequent year. For example, if a new LEA loses its section 8003(b)(2) eligibility in FFY 3 because its tax rate dropped to 94 percent of the average tax rate of comparable districts in the State, that LEA is still entitled to receive a payment under section 8003(b)(2) in FFY 3 if it applies for such payment (a "hold harmless" payment under §222.66(a)). Then if the LEA applies in FFY 4 and meets the eligibility requirement under section 8003(b)(2), it is once again eligible to receive a section 8003(b)(2) payment (see §222.66(c)). The effects of these requirements on a new applicant's status and payments are summarized in the table below.

*New LEAs*

	<i>FFY 1</i>	<i>FFY 2</i>	<i>FFY 3</i>	<i>FFY 4</i>	<i>FFY 5</i>
<b>8003(b)(2) Eligibility:</b>	<i>Yes</i>	<i>Yes</i>	<i>No</i>	<i>Yes</i>	<i>Yes</i>
<b>Payment Type:</b>	(b) (1)	(b) (2)	(b) (2) Hold Harmless	(b) (2)	(b) (2)

(Authority: 20 U.S.C. 7703(b)(2))

§222.67 How may a State aid program affect a local educational agency's eligibility for assistance under section 8003(b)(2)?

The Secretary determines that an LEA is not eligible for financial assistance under section 8003(b) (2) if--

(a) The LEA is in a State that has an equalized program of State aid that meets the requirements of section 8009; and

(b) The State, in determining the LEA's eligibility for or amount of State aid, takes into consideration the portion of the LEA's payment under section 8003(b) (2) that exceeds what the LEA would receive under section 8003(b) (1) .

(Authority: 20 U.S.C. 7703(b) (2))

§222.68 How does the Secretary determine whether a fiscally independent local educational agency meets the applicable tax rate requirement?

(a) To determine whether a fiscally independent LEA, as defined in §222.2(c), meets the applicable tax rate requirement in §§222.63(b) (3), 222.63(c) (2), and 222.64(a) (3), the Secretary compares the LEA's local real property tax rate for current expenditure purposes, as defined in §222.2(c) (referred to in this part as "tax rate" or "tax rates"), with the tax rates of its generally comparable LEAs.

(b) For purposes of this section, the Secretary uses-

-

(1) The actual tax rate if all the real property in the LEA and its generally comparable LEAs is assessed at the same percentage of true value; or

(2) Tax rates computed under §§222.69-222.71.

(c) The Secretary determines that an LEA described in §§222.63(b), 222.63(c), or 222.64(a) meets the applicable tax rate requirement if--

(1) The LEA's tax rate is equal to at least 95 percent (or 125 percent under 222.63(c)) of the average tax rate of its generally comparable LEAs;

(2) Each of the LEA's tax rates for each classification of real property is equal to at least 95 percent (or 125 percent under 222.63(c)) of each of the average tax rates of its generally comparable LEAs for the same classification of property;

(3) The LEA taxes all of its real property at the maximum rates allowed by the State, if those maximum rates apply uniformly to all LEAs in the State and the State does not permit any rates higher than the maximum; or

(4) The LEA has no taxable real property.

(Authority: 20 U.S.C. 7703(b)(2))

§222.69 What tax rates does the Secretary use if real property is assessed at different percentages of true value?

If the real property of an LEA and its generally comparable LEAs consists of one classification of property but the property is assessed at different percentages of true value in the different LEAs, the Secretary determines whether the LEA meets the applicable tax rate requirement under §222.68(c)(1) by using tax rates computed by--

(a) Multiplying the LEA's actual tax rate for real property by the percentage of true value assigned to that property for tax purposes; and

(b) Performing the computation in paragraph (a) of this section for each of its generally comparable LEAs and determining the average of those computed tax rates.

(Authority: 20 U.S.C. 7703(b)(2))

§222.70 What tax rates does the Secretary use if two or more different classifications of real property are taxed at different rates?

If the real property of an LEA and its generally comparable LEAs consists of two or more classifications of real property taxed at different rates, the Secretary determines whether the LEA meets the applicable tax rate requirement under §222.68(c)(1) or (2) by using one of the following:

(a) Actual tax rates for each of the classifications of real property.

(b) Tax rates computed in accordance with §222.69 for each of the classifications of real property.

(c) Tax rates computed by--

(1) Determining the total true value of all real property in the LEA by dividing the assessed value of each classification of real property in the LEA by the percentage of true value assigned to that property for tax purposes and aggregating the results;

(2) Determining the LEA's total revenues derived from local real property taxes for current expenditures (as defined in section 8013);

(3) Dividing the amount determined in paragraph (c)(2) of this section by the amount determined in paragraph (c)(1) of this section; and

(4) Performing the computations in paragraphs (c)(1), (2), and (3) of this section for each of the generally comparable LEAs and then determining the average of their computed tax rates.

(Authority: 20 U.S.C. 7703(b)(2))

§222.71 What tax rates may the Secretary use if substantial local revenues are derived from local tax sources other than real property taxes?

(a) In a State in which a substantial portion of revenues for current expenditures for educational purposes

is derived from local tax sources other than real property taxes, the State educational agency (SEA) may request that the Secretary take those revenues into account in determining whether an LEA in that State meets the applicable tax rate requirement under §222.68.

(b) If, based upon the request of an SEA, the Secretary determines that it is appropriate to take the revenues described in paragraph (a) of this section into account in determining whether an LEA in that State meets the applicable tax rate requirement under §222.68, the Secretary uses tax rates computed by--

(1) Dividing the assessed value of each classification of real property in the LEA by the percentage of true value assigned to that property for tax purposes and aggregating the results;

(2) Determining the LEA's total revenues derived from local tax sources for current expenditures (as defined in section 8013);

(3) Dividing the amount determined in paragraph (b) (2) of this section by the amount determined in paragraph (b) (1) of this section; and

(4) Performing the computations in paragraphs (b) (1), (2), and (3) of this section for each of the generally

comparable LEAs and then determining the average of those computed tax rates.

(Authority: 20 U.S.C. 7703(b)(2))

§222.72 How does the Secretary determine whether a fiscally dependent local educational agency meets the applicable tax rate requirement?

(a) If an LEA is fiscally dependent, as defined in §222.2(c), the Secretary compares the LEA's imputed local tax rate, calculated under paragraph (b) of this section, with the average tax rate of its generally comparable LEAs, calculated under paragraph (c) of this section, to determine whether the LEA meets the applicable tax rate requirement.

(b) The Secretary imputes a local tax rate for a fiscally dependent LEA by--

(1) Dividing the assessed value of each classification of real property within the boundaries of the general government by the percentage of true value assigned to that property for tax purposes and aggregating the results;

(2) Determining the amount of locally derived revenues made available by the general government for the LEA's current expenditures (as defined in section 8013); and

(3) Dividing the amount determined in paragraph (b) (2) of this section by the amount determined in paragraph (b) (1) of this section.

(c) The Secretary performs the computations in paragraph (b) of this section for each of the fiscally dependent generally comparable LEAs and the computations in §§222.68 through 222.71, whichever is applicable, for each of the fiscally independent generally comparable LEAs and determines the average of all those tax rates.

(d) The Secretary determines that a fiscally dependent LEA described in §222.63(b) or §222.64(a) meets the applicable tax rate requirement if its imputed local tax rate is equal to at least 95 percent of the average tax rate of its generally comparable LEAs.

(e) The Secretary determines that a fiscally dependent LEA described in §222.63(c) meets the applicable tax rate requirement if its imputed local tax rate is equal to at least 125 percent of the average tax rate of its generally comparable LEAs.

(Authority: 20 U.S.C. 7703(b) (2))

§222.73 What information must the State educational agency provide?

The SEA of any State with an LEA applying for assistance under section 8003(b) (2) shall provide the

Secretary with relevant information necessary to determine the PPE for all LEAs in the State and whether the LEA meets the applicable tax rate requirement under this subpart.

(Authority: 20 U.S.C. 7703(b)(2))

§222.74 How does the Secretary identify generally comparable local educational agencies for purposes of section 8003(b)(2)?

(a) Except as otherwise provided in paragraph (b) of this section, the Secretary identifies generally comparable LEAs for purposes of this subpart in accordance with the local contribution rate procedures described in §§222.39 through 222.40.

(b) For applicant LEAs described in §222.64(a)(2)(ii) and (a)(3)(ii), to identify the one or three generally comparable LEAs, the Secretary uses the following procedures:

(1) The Secretary asks the SEA of the applicant LEA to identify generally comparable LEAs in the State by first following the directions in §222.39(a)(4), using data from the preceding fiscal year. The SEA then removes from the resulting list any LEAs that are significantly impacted, as described in §222.39(b)(1), except the applicant LEA.

(2) If the remaining LEAs are not in rank order by total ADA, the SEA lists them in that order.

(3) The LEA may then select as its generally comparable LEAs, for purposes of section 8003(b)(2) only, one or three LEAs from the list that are closest to it in size as determined by total ADA (i.e., the next one larger or the next one smaller, or the next three larger LEAs, the next three smaller, the next two larger and the next one smaller, or the next one larger and the next two smaller). (Authority: 20 U.S.C. 7703(b)(2))

§222.75 How does the Secretary compute the average per pupil expenditure of generally comparable local educational agencies under this subpart?

For applicant LEAs described in §222.64(a)(2)(ii), the Secretary computes average per pupil expenditures (APPE) by dividing the sum of the total current expenditures for the third preceding fiscal year for the identified generally comparable LEAs by the sum of the total ADA of those LEAs for the same fiscal year.

(Authority: 20 U.S.C. 7703(b)(2))

222.76-222.79 [Reserved]

Subpart F [Removed and Reserved]

32. Subpart F, consisting of §§ 222.80 through 222.85, is removed and reserved.

§222.151 [Amended]

33. Section 222.151 is amended by:

A. In paragraph (a), removing the phrase "or Pub. L. 81-874".

B. In paragraph (b)(1), removing the number "30" and adding in its place the number "60".

§222.152 [Amended]

34. Section 222.152 is amended in paragraphs (a)(1) and (c) by removing the phrase "or Pub. L. 81-874" from each of those paragraphs.

35. Section 222.153 is amended by revising paragraph (a) to read as follows:

§222.153 How must a local educational agency request an administrative hearing?

\* \* \* \* \*

(a)(1) If it mails the hearing request, address it to the Secretary, c/o Director, Impact Aid Program, Room 3E105, U.S. Department of Education, 400 Maryland Avenue, SW, Washington DC 20202-6244;

(2) If it hand-delivers the hearing request, deliver it to the Director, Impact Aid Program, Room 3E105, U.S. Department of Education, 400 Maryland Avenue, SW, Washington DC 20202-6244; or

(3) If it emails the hearing request, send it to Impact.Aid@ed.gov.

Note to paragraph (a): The Secretary encourages applicants requesting an Impact Aid hearing to mail or email their requests. Because of enhanced security procedures, building access for non-official staff may be limited. Applicants should be prepared to mail their hearing requests if they or their courier are unable to obtain access to the building.

\* \* \* \* \*

§222.159 [Amended]

36. Section 222.159 is amended by removing the phrase "60 days" and adding, in its place, the phrase "30 working days (as determined by the LEAs or State)".

37. Section 222.161 is amended by:

A. Revising paragraph (a) (1) (ii).

B. Removing paragraph (a) (1) (iii).

C. Revising paragraph (a) (5).

D. In paragraph (c), amending paragraph (4) of the definition of "current expenditures" by adding the word "or" after the semicolon.

E. In paragraph (c), amending paragraph (5) of the definition of "current expenditures" by removing the phrase "or under Pub. L. 81-874" and removing "; or" and adding in its place a period.

F. In paragraph (c), removing paragraph (6) of the definition of "current expenditures".

The revisions read as follows:

§222.161 How is State aid treated under section 8009 of the Act?

(a) \* \* \*

(1) \* \* \*

(ii) A State may not take into consideration--

(A) That portion of an LEA's payment that is generated by the portion of a weight in excess of one under section 8003(a) (2) (B) of the Act (children residing on Indian lands);

(B) Payments under section 8003(d) of the Act (children with disabilities); or

(C) The amount that an LEA receives under section 8003(b) (2) that exceeds the amount the LEA would receive if eligible under section 8003(b) (1) and not section 8003(b) (2) (heavily impacted LEAs).

\* \* \* \* \*

(5) A State may not take into consideration payments under the Act before its State aid program has been certified by the Secretary.

\* \* \* \* \*

§222.163 [Amended]

38. Section 222.163 is amended by:

A. In paragraph (a), removing the phrase "and Pub. L. 81-874".

B. In paragraph (c), removing the phrase "and Pub. L. 81-874" and "or payments under Pub. L. 81-874".

§222.165 [Amended]

39. Section 222.165 is amended in paragraph (a)(1) by removing the number "30" and adding in its place the number "60".

§222.175 [Amended]

40. Section 222.175 is amended by:

A. Removing paragraphs (a)(4) and (8) and redesignating paragraphs (a)(5) through (7) as paragraphs (a)(4) through (6), respectively.

B. Redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b).

The addition reads as follows:

§222.175 What regulations apply to recipients of funds under this program?

\* \* \* \* \*

(b) The OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485, and the Uniform

Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended in 2 CFR part 3474.

\* \* \* \* \*

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